

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DENNIS WILLARD,

Plaintiff,

v.

AINSWORTH GAME TECHNOLOGY,
INC.,

Defendant.

Case No. 2:19-cv-01970-RAJ

ORDER

I. INTRODUCTION

This matter comes before the Court on Defendant's Motion to Transfer Venue under 28 U.S.C. § 1404(a). For the reasons below, the Court **GRANTS** the motion. The Court transfers this matter to the United States District Court for the District of Nevada.

II. BACKGROUND

Plaintiff Dennis Willard, a resident of Snohomish County, Washington, was employed by Defendant Ainsworth Game Technology, Inc. ("AGT") (Dkt. # 1-2 ¶ 1.1), a Florida corporation with its headquarters and principal place of business in Las Vegas, Nevada (Dkt. # 10 at 3). Plaintiff began his employment on July 31, 2017, as an account executive engaged in sales of Defendant's gaming equipment and served in that role until his termination on July 15, 2019. Dkt. # 1-2 ¶¶ 3.1, 3.5. Under the company's "Sale Compensation Plan North America," ("Comp Plan") adopted on July 1, 2018, Plaintiff

1 received monthly commission payments between August and December 2018. *Id.* ¶ 3.3.
2 Beginning in January 2019, however, Defendant stopped providing Plaintiff commission
3 payments, despite several large sales. *Id.* ¶¶ 3.4, 3.5. Six months later, Defendant
4 terminated Plaintiff's employment and informed him that he was "ineligible for any
5 additional [commission] payments based on his termination." *Id.* ¶ 3.6. Defendant
6 alleges Plaintiff was terminated for "repeated failures to fulfill the obligations of his job
7 and repeated failures to follow company policies, including policies regarding the use of
8 the corporate credit card, among other reasons." Dkt. 8 ¶ 2.8.

9 On November 12, 2019, Plaintiff filed a complaint for unpaid wages in Snohomish
10 County Superior Court alleging that Defendant violated Washington wage laws, RCW
11 49.48, *et seq.* and RCW 49.52.50. Dkt. # 1-2 ¶ 4.4. On December 3, 2019, Defendant
12 removed the case to this Court based on diversity of citizenship pursuant to 28. U.S.C.
13 §§ 1332(a) and 1441. Dkt. # 1 at 1. A week later, Defendant responded to the complaint
14 and filed counterclaims, alleging breach of contract and conversion. Dkt. # 8 ¶ 3.2-4.4.
15 Specifically, Defendant alleged that Plaintiff breached two provisions of the parties'
16 "Confidentiality, Non-Disclosure, Non-Competition, Non-Solicitation and Assignment of
17 Inventions Agreement" ("NDA") (Dkt. # 8 ¶ 2.7): (1) Plaintiff violated the "Return of
18 Company Materials" provision by failing to account for company credit card charges and
19 for failing to relinquish his participation in Defendant-sponsored golf events or,
20 alternatively, return Defendant's sponsorship after his termination (*id.* ¶¶ 3.3-3.5); and (2)
21 Plaintiff violated the "Covenant Not to Compete and No Solicitation" by engaging with
22 Defendant's current and potential customers at the golf events and thus disadvantaging
23 Defendant within 90 days of Plaintiff's termination (*id.* ¶¶ 3.6-3.7).

24 On December 20, 2019, Defendant filed this motion to transfer case venue to the
25 district of Nevada. Dkt. # 10. Defendant asserts that transfer is required under the
26 NDA's forum selection clause (*id.* at 2), which states in relevant part:

27 To the extent that any lawsuit is permitted under the Agreement, I hereby express
28 ORDER – 2

1 consent to the personal and exclusive jurisdiction and venue of the state and
2 federal courts located in Nevada for any lawsuit filed against me by the Company.

3 Dkt. # 12-2 ¶ 8.

4 Plaintiff argues that his wage claims do not fall under the NDA, but rather the
5 Comp Plan, which has no forum selection clause requiring a transfer. Dkt. # 14 at 1.
6 Plaintiff further notes that his claims are governed by Washington law and that he, as a
7 lifelong Washington resident, chose to file the claims in Washington. *Id.* at 2. Plaintiff
8 alleges that Defendant's assertion of counterclaims based on the NDA was a "blatant
9 attempt" to make Plaintiff's pursuit of wage claims "as expensive and inconvenient" as
10 possible. *Id.*

11 III. DISCUSSION

12 "When the parties have agreed to a valid forum-selection clause, a district court
13 should ordinarily transfer the case to the forum specified in that clause." *Atl. Marine*
14 *Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 571 U.S. 49, 62 (2013). "[A] valid
15 forum-selection clause [should be] given controlling weight in all but the most
16 exceptional cases." *Id.* at 63. When the contract at issue contains a forum selection
17 clause, the court must "adjust the forum non conveniens analysis in three ways: (1) the
18 plaintiff's choice of forum merits no weight; (2) the court should not consider arguments
19 about the parties' private interests; and (3) a transfer of venue will not carry with it the
20 original venue's choice of law rules." *In re Orange, S.A.*, 818 F.3d 956, 961 (9th Cir.
21 2016) (internal citations and quotations omitted). The court's discretion in deciding
22 whether to transfer a case where a forum selection clause exists is limited to
23 consideration of public interest factors. 571 U.S. at 64. "Because those factors will
24 rarely defeat a transfer motion, the practical result is that forum-selection clauses should
25 control except in unusual cases." *Id.*

26 A. Applicability of the Forum Selection Clause

27 The first question here is not whether the forum selection clause is valid, but

1 whether the claims are governed by the NDA and are thus subject to the clause. In *In re*
2 *Orange*, Defendant Orange, S.A., a French multinational telecommunications company,
3 petitioned the court to dismiss Plaintiff Telesocial's claims based on a forum non
4 conveniens argument. *Id.* This argument relied on the forum selection clause in the
5 parties' nondisclosure agreement, which required all disputes to be "submitted to the
6 Court of Paris." *Id.* at 962. The court held that Telesocial's claims, including claims for
7 violations of the Computer Fraud and Abuse Act, breach of contract for violating
8 Telesocial's "Terms of Use," and other California-law claims arising from the theft of
9 trade secrets and proprietary software code, were not covered under the terms of the
10 parties' nondisclosure agreement and were, therefore, not subject to the forum selection
11 clause. *Id.* at 962.

12 While the facts here appear analogous to those in *In Re Orange*, the similarities
13 end with Defendant's counterclaims. Of course, Defendant's counterclaim that Plaintiff
14 violated the NDA by participating in golf events after his termination (but while the non-
15 solicitation clause was still in effect) does not appear to pertain to Plaintiff's claim for
16 unpaid wages during the last six months of his employment. However, Defendant's
17 second counterclaim, alleging Plaintiff violated the NDA by failing to account for his
18 company credit card expenses, is directly related to the facts surrounding Defendant's
19 wage claim. Indeed, Defendant contends that this failure is the reason—at least in part—
20 why Plaintiff did not receive commission payments. Dkt. # 17 at 3. According to
21 Defendant, Plaintiff "did not fulfill required conditions under the [Commission] Plan to
22 be eligible for commissions." *Id.* Therefore, at least one of the counterclaims filed by
23 Defendant goes to the core of Plaintiff's claims, subjecting Plaintiff's claim to the NDA's
24 forum selection clause.

25 **B. The Interests of Justice**

26 The second question is whether public interest factors override the parties' forum
27 selection clause. Plaintiff contends that Defendant filed breach of contract counterclaims

1 only to gain a “tactical advantage” over Plaintiff. Dkt. # 14 at 10. Yet, regardless of his
2 motives, Defendant has not deprived Plaintiff of the opportunity to litigate his claims.
3 Plaintiff may still pursue his breach of contract claims against Defendant in federal
4 district court, albeit in a different state. The Court is unpersuaded that Plaintiff’s
5 inconvenience presents a public interest factor sufficient to defeat the transfer motion. In
6 the absence of additional public interest factors or exceptional circumstances compelling
7 the denial of the motion, the Court has no choice but to transfer the case to the parties’
8 agreed upon forum.

9 IV. CONCLUSION

10 For the reasons stated above, the Court **GRANTS** the motion to transfer venue and
11 orders the transfer of the case to the District of Nevada.

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13 DATED this 31st day of July, 2020.

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17 The Honorable Richard A. Jones
18 United States District Judge
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